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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )

Southwestern Bell Telephone )  
Company's Comparably Efficient )  
Interconnection Plan for the )  
Provision of Security Service )

CC Docket Nos. 85-229, 90-623  
and 95-20

To: The Common Carrier Bureau

COMMENTS OF THE  
ALARM INDUSTRY COMMUNICATIONS COMMITTEE

Danny E. Adams  
Steven A. Augustino  
KELLEY DRYE & WARREN, LLP  
1200 Nineteenth Street, N.W., Suite 500  
Washington, D.C. 20036  
202-955-9600

Its Attorneys

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## SUMMARY

Section 275(a) of the Communications Act, as amended by the Telecommunications Act of 1996, prohibits SWBT and other Bell Operating Companies from engaging "in the provision of alarm monitoring services." SWBT's proposal presents the first significant test of Congress' clear prohibition. It is important, therefore, for the Bureau to insist that SWBT demonstrate its full compliance with the Act before approving its CEI plan.

AICC believes that, as filed, SWBT's proposal cannot be approved because it would allow SWBT to engage in the provision of alarm monitoring services in violation of the Act. SWBT's proposal implicitly depends upon the validity of the proposition that, as long as it does not directly operate a central station, a BOC may engage in all other aspects of the alarm monitoring business. AICC believes this interpretation is not faithful to the plain meaning of Section 275. Section 275 prohibits the BOCs from engaging in any aspects of the *provision* of alarm monitoring services; it allows them only to provide the sale, installation and maintenance of alarm equipment. SWBT may not hold itself out as the service provider for alarm monitoring services, or create the customer perception that it is the provider. SWBT also may not, directly or indirectly, now or in the future, "own" the customer account. Finally, SWBT may not obtain a financial interest in or share revenues with the entity it proposes will act as the alarm monitoring service provider. Unless SWBT's plan is modified to conform to these parameters, the Bureau cannot approve the proposal.

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The Alarm Industry Communications Committee ("AICC"), by its attorneys, respectfully submits these comments in response to Southwestern Bell Telephone Company's ("SWBT") proposed CEI plan for Security Service.<sup>1</sup> AICC submits that SWBT's CEI plan cannot be approved without substantial modification because, as currently structured, the plan would permit SWBT to engage in prohibited alarm monitoring activities in contravention of Section 275 of the Telecommunications Act of 1996 ("the 1996 Act").

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<sup>1</sup> Southwestern Bell Telephone Company's Comparably Efficient Interconnection Plan for Security Service, filed Apr. 4, 1996 ("SWBT Plan"). See Public Notice, DA 96-645 (Apr. 26, 1996).

AICC is a subcommittee of the Central Station Alarm Association. Its members consist of ADT Security Systems, Inc.; Holes Protection Group; Honeywell Protection Services; the National Burglar and Fire Alarm Association; National Guardian Corporation; Rollins, Inc.; Wells Fargo Alarm Services; the Security Industry Association and Security Network Associates. The membership represented by the AICC represents the overwhelming majority of the alarm security services in the United States. AICC members are highly dependent on Bell Operating Companies ("BOCs") such as SWBT for essential services and interconnection to local exchange facilities, and have participated extensively over the years in Commission proceedings affecting the provision of alarm monitoring services.

Although submitted as a routine CEI filing, SWBT's proposal will provide the first significant test of Section 275 of the 1996 Act, which prohibits the BOCs from "engag[ing] in the provision of alarm monitoring services" for five years.<sup>2</sup> This prohibition was carefully crafted to address "real . . . not theoretical" concerns over alarm service providers' susceptibility to BOC market power.<sup>3</sup> The concern is that the BOCs will use their control over local exchange facilities -- which are essential to the provision of alarm monitoring services -- to discriminate against alarm service providers or to obtain competitively sensitive information which they may exploit for anticompetitive purposes. These concerns were supported by a history of local telephone company use of their market power to harm alarm

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<sup>2</sup> 47 U.S.C. § 275(a)(1). The only exception -- not implicated here -- is for the continuation of alarm monitoring activities engaged in by a BOC on or before November 30, 1995. *See id.* § 275(a)(2).

<sup>3</sup> *See* H.R. Rep. No. 104-204, 104th Cong., 1st Sess., 87 (1995) ("House Report"). Section 275 of the 1996 Act is based upon the House of Representatives' provisions regarding alarm monitoring services. S. Rep. No. 104-450, 104th Cong., 2d Sess., 157 (1996).

service providers, which required the government on several occasions to "step[ ] in to ensure a level playing field."<sup>4</sup>

With Section 275, Congress again acted to provide for a level playing field before the BOCs are permitted to enter the alarm monitoring business. In contrast to electronic publishing -- where Congress allowed BOC entry immediately but subject to a separate subsidiary and other safeguards -- and in contrast to interexchange services and equipment manufacturing -- where Congress conditioned entry upon satisfaction of enumerated criteria and, upon entry, imposed additional safeguards (including a separate subsidiary requirement) -- Congress determined in the context of alarm monitoring services that the protection of competition required a temporary prohibition on BOC participation in the market.<sup>5</sup> Thus, a BOC may not, directly or indirectly, "engage in the provision of alarm monitoring services."<sup>6</sup> Because Congress viewed this language as a flat prohibition for five years, during which time the separate subsidiary rules for interexchange services and electronic publishing expire, no separate subsidiary rule applies to Section 275.

SWBT's proposal is significant because it will establish the boundaries of the Section 275 restriction by establishing what it means to be "engaged in the provision of alarm monitoring services." Implicit in SWBT's CEI plan (and thus its reading of Section 275) is

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<sup>4</sup> House Report at 87.

<sup>5</sup> Indeed, even though Congress grandfathered the existing operations of BOCs already engaged in alarm monitoring services, it strictly prohibited expansion of those activities through acquisitions, investments, or purchases of customer contracts. See 47 U.S.C. § 275(a)(2).

<sup>6</sup> *Id.* § 275(a)(1). As explained *infra*, Section 275 permits the BOCs only to provide sales, installation and maintenance of alarm monitoring CPE.

the proposition that, as long as it does not directly operate a central station, SWBT (or any other BOC) may engage in all other aspects of the alarm monitoring business. AICC believes this interpretation is patently inconsistent with the intent of Section 275. Moreover, it relies on a technical distinction -- between the physical provision of central station functions and other elements of alarm monitoring -- which is impossible to enforce in practice. In essence, SWBT claims it may resell alarm monitoring services (keeping a portion of the monitoring revenues) so long as it does not directly perform the central station portion of the service. In truth, Section 275 does not allow SWBT to resell alarm monitoring services, and the CEI plan accordingly must be modified before it can be approved. Additionally, to prevent reliance on this overly narrow reading of Section 275(a) (and to preclude similar interpretations by other BOCs in the future), the Bureau should declare that any BOC involvement in the sales of, or receipt of revenues from, alarm monitoring services is a violation of the statute. Section 275 must be read as it was intended -- to prohibit BOC participation in the alarm monitoring *business* -- not merely as a meaningless rule requiring the BOCs to subcontract for the central station functions.

#### **I. SUMMARY OF SWBT'S PROPOSED SECURITY SERVICE**

SWBT asks the Commission to approve its offering of a service it calls "SWBT Security Service." Under the proposal, SWBT would market both customer premises equipment ("CPE") and alarm monitoring services (which it asserts will be provided by an "unaffiliated monitoring entity") under a single brand name -- SWBT Security Service. SWBT would sell this product directly through its own personnel, using "various SWBT customer contact centers with responsibility for the residential market." (SWBT Plan at 2.)

Although each prospective customer would be asked to sign two separate documents in order to obtain SWBT Security Service, the contracts are bundled as a single package, the acceptance of which is "necessary to subscribe to the home security offering." (*Id.*) In other words, SWBT contemplates that it would sell SWBT Security Service as a single service composed of two complementary components.<sup>7</sup>

Once a customer has subscribed to SWBT Security Service, he will be billed for the service through his monthly SWBT local telephone bill. (*Id.* at 3). SWBT states in its filing that it will list its charge for SWBT Security Service as a single amount combining all charges for the associated services, including the CPE (if not paid for in advance), installation, maintenance, and monitoring. (*Id.*) Subscribers will remit payment directly to SWBT along with payment for other SWBT telephone services. Finally, SWBT will retain a portion of the alarm monitoring fee paid by the customer. SWBT's share of the monitoring revenues will equal the difference between the monthly service charge for alarm monitoring and "an agreed upon fee [remitted by SWBT to the central station provider] on a per subscriber basis." (*Id.*) Nothing in SWBT's proposal ensures the amount of this "agreed upon fee" will equal the amount the customer is charged for the monitoring portion of the service.

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<sup>7</sup> Anyone who has ever purchased a house or automobile knows that signing multiple documents as part of a transaction does not serve to distinguish various vendors in the mind of the buyer.



## **II. WITHOUT SUBSTANTIAL MODIFICATIONS, SWBT'S PLAN WOULD VIOLATE NEW SECTION 275(a) OF THE TELECOMMUNICATIONS ACT OF 1996**

Although SWBT devotes its filing to the issue of whether it has complied with the Commission's CEI requirements, it is not necessary to reach that question at this time.<sup>8</sup> Regardless of whether the "interconnection" SWBT offers other alarm service providers is comparable (and whether it meets the other CEI parameters), SWBT's proposal cannot be approved without modification because it fails a more fundamental threshold: SWBT is prohibited from offering SWBT Security Service as described.

SWBT implicitly adopts a very narrow interpretation of what constitutes the "provision of alarm monitoring services." Under its proposal, SWBT would be the sole consumer contact and would actually undertake all aspects of the offering of alarm services to consumers *except* the physical performance of the central station response function. SWBT does not propose to confine its participation to "the sale, installation and maintenance of residential home security systems" as it suggests in its filing. (SWBT Plan at 2).<sup>9</sup> It

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<sup>8</sup> AICC does not concede that SWBT has demonstrated compliance with the CEI requirements, however. In particular, SWBT's assertion that it need not demonstrate compliance with the CPNI provisions of Sections 222 and 275(d) of the 1996 Act (SWBT Plan at 13) is incorrect, and has been rejected by the Commission. *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Notice of Proposed Rulemaking, CC Docket No. 96-115, FCC 96-221, ¶ 38 (rel. May 17, 1996). Thus, the Bureau also should require SWBT to amend its CEI plan to demonstrate how it will comply with Section 275(d) and with Section 222.

<sup>9</sup> AICC agrees that Section 275 would not bar SWBT from participating in the alarm CPE market, assuming compliance with all other applicable law. An "alarm monitoring service" is defined by the Act to be "a service which employs a device [that receives signals of potential threats to person or property at the premises and that transmits an alarm signal (continued...)]

would do much more than this, by reselling the "unaffiliated" provider's alarm monitoring service, by using the SWBT brand name for the integrated service, by billing a single service charge to the customer on SWBT bills, by handling all customer inquiries and other consumer contacts, and by sharing in the alarm monitoring revenues. Therefore, the only way SWBT's plan could be consistent with Section 275 is if the prohibition on the "provision" of alarm monitoring services demanded only that SWBT subcontract the alarm monitoring function.

AICC submits that Section 275 cannot be construed so narrowly. This reading of the 1996 Act provides none of the protections against anticompetitive conduct which the Congress intended to enact in drafting and adopting Section 275. Moreover, alarm monitoring is not simply the processing of an alarm signal (although that obviously is an important element of what the customer expects from a provider); rather it is the series of actions a provider takes to gain the customer's trust that her business or home will be protected in the event a situation does arise. In other words, the *service* an alarm provider offers encompasses the totality of the relationship with the customer. Congress worded Section 275 broadly so as to encompass this entire service arrangement, not simply to require subcontracting of the central station function.

What, then, should the Bureau look for in defining the essence of the provision of alarm monitoring services under Section 275? AICC suggests that there are at least three critical areas which are characteristic of the provision of an alarm monitoring service. First,

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<sup>9</sup>(...continued)  
by means of local telephone lines.]" 47 U.S.C. § 275(e). This definition excludes the sale of the equipment itself, but includes any services that use such equipment.

the Bureau should examine the customer-provider relationship to determine who customers look to as their service vendor. Second, the Bureau should determine which entity exercises control over the customer account. Third, the Bureau should look at the nature of the relationship between the BOC and a provider of alarm monitoring services.

SWBT's proposal raises significant questions in each of these three areas, which must be addressed before the Bureau could approve SWBT's proposal.

#### **A. The Customer-Provider Relationship**

It is not unusual in the provision of telecommunications services for more than one potential supplier to be involved in the provision of a service. Indeed, the Commission is no stranger to issues surrounding whether an entity should be deemed the "provider" of a particular service.<sup>10</sup> In these situations, the essential question is which entity holds itself out to the public as the service provider.<sup>11</sup> Indicia of the entity holding itself out as a provider include which entity maintains the sales and customer service relationship with the customer, which entity's name is used to provide the service, which entity determines the total amount the customer pays, and which entity the customer perceives as its service provider.

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<sup>10</sup> See, e.g., *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Service and Facilities*, 60 F.C.C. 2d 261 (1976) ("*Resale Order*"), recon. 62 F.C.C. 2d 588 (1971), *aff'd sub nom.*, *AT&T v. FCC*, 572 F.2d 17 (2d Cir.), cert. denied, 439 U.S. 875 (1978) (concluding that resellers of communications services are "providers" subject to FCC jurisdiction); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560 (1995) (authorizations to change service providers must be in the name of the entity that sets the customer's rate).

<sup>11</sup> *Resale Order* at ¶ 101.

Consideration of similar indicia here leads to the conclusion that SWBT is the entity that would provide SWBT Security Service to the subscriber. All of the initial sales and marketing contacts are with SWBT -- and only with SWBT. The service being sold is offered in SWBT's name and will be billed on its invoices. Moreover, the filing states that SWBT intends to bill for SWBT Security Service as a single charge incorporating both the installation and maintenance of the CPE and associated alarm monitoring services. Consumer questions about the service, its billing or anything else, are to be directed to SWBT. In all respects, the invoice will look exactly as if SWBT were the provider setting the customer's rates. Consumers will pay for the service by writing checks made out to SWBT. In fact, nothing in SWBT's proposal indicates there will be *any* direct contact between the customer and the "unaffiliated monitoring entity." There is no indication that customers will contact the central station provider to report service problems, to make billing inquiries, to make service changes, or for other matters relating to the monitoring service they receive. Given that the customer deals with SWBT for everything else related to its home security system, it is reasonable to conclude that customers are likely to expect SWBT will handle these types of inquiries as well. Therefore, if SWBT offered the service as described in its filing, all of the indicia would point to SWBT as the service provider for alarm monitoring services.

This conclusion is further illustrated by the following chart, which compares the customer-provider relationship under SWBT Security Service with the relationship under services provided by an independent alarm monitoring company:

	SWBT Security Service	Independent Alarm Company Service
Sales and Marketing Performed by:	SWBT	Alarm Company
CPE Installed and Maintained by:	SWBT	Alarm Company
Customer Inquiries/Problems Directed to:	SWBT	Alarm Company
Invoices Rendered in the Name of:	SWBT	Alarm Company
Customer Payments Made Payable to:	SWBT	Alarm Company
Toll Charges (if any) to Reach Central Station Paid by:	Customer	Customer
Central Station Monitoring Representatives Employed by:	"Unaffiliated" Monitoring Entity	Alarm Company (or sub-contractor for Alarm Company)

As the above illustrates, SWBT's proposed activities parallel those of an independent alarm monitoring entity offering its own service directly to the public. The only difference is that SWBT, in essence, subcontracts to obtain the central station capability for the service it is offering.<sup>12</sup>

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<sup>12</sup> In informal discussions, SWBT has indicated to AICC that it will modify its proposed service arrangements to alleviate some of these concerns. AICC welcomes these changes, and urges the Bureau to ensure that whatever final arrangement is proposed does not hold SWBT out as the provider of alarm monitoring services.

## **B. Control Over Customer Accounts**

SWBT does not provide examples of either of the two contracts that customers will be required to sign in order to receive SWBT Security Service. Further, the description of these contracts in the Plan provides only the barest outline of their scope. For example, as to the contract between SWBT and the customer, SWBT states only that the document "will outline the SWBT installation and maintenance policy" and will "detail contractual obligations on the part of the consumer and SWBT." (SWBT Plan at 2-3.) Similarly, of the second contract (for alarm monitoring services), SWBT states only that this contract will be "intended to communicate the monitoring service(s) liability [sic] and obligations to the consumer." (*Id.* at 3.) Nothing in the proposal gives the Bureau any basis for determining the content of either contract.

This information is critical to evaluation of SWBT's proposal. If SWBT is to comply with the alarm monitoring prohibition, it must have no involvement in the customer's relationship with the alarm monitoring company. Thus, SWBT must not have a right (1) to unilaterally change the entity offering monitoring services to a customer, (2) to assign the customer contract or the proceeds of the customer contract, or (3) to receive assignment of the contract after expiration of the five-year prohibition.<sup>13</sup> SWBT also must not have any recourse if the customer decides to switch monitoring entities, must not be able to assert rights in the event of a breach of the monitoring contract, and must not be able to modify or terminate the installation and maintenance contract in the event of a breach of the monitoring

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<sup>13</sup> SWBT must not obtain these rights in *either* the contract between the "unaffiliated monitoring entity" and the customer or in the contract between SWBT and the "unaffiliated monitoring entity."

contract.<sup>14</sup> In short, SWBT must not, directly or indirectly, now or in the future, "own" the customer or the customer contract.<sup>15</sup>

There is a further basic problem relating to the alarm monitoring contract. Under SWBT's proposal, the customer will pay a specified fee for alarm monitoring services, which presumably will be described in the customer's contract with the "unaffiliated monitoring entity."<sup>16</sup> SWBT will remit only a portion of this fee to the monitoring entity (SWBT Plan at 3), keeping the remainder for itself. AICC submits that SWBT may not share in the proceeds of alarm monitoring services. Sharing in the proceeds is equivalent to obtaining a financial interest in an alarm monitoring entity, which is prohibited by Section 275(a). Moreover, the fact that SWBT shares in the revenues is *prima facie* evidence it is engaged in the provision of prohibited alarm monitoring services. One must assume that SWBT is not sharing in alarm monitoring revenues without consideration. The fact that SWBT's payment is tied to the alarm monitoring revenues supports the inference that the consideration it gives in return also is tied to the alarm monitoring revenues. In other words, the proper inference from the fact that SWBT is entitled to share in the revenues from the provision of alarm

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<sup>14</sup> SWBT should not, for example, be able to impose a penalty for the customer terminating the alarm monitoring contract. In addition, SWBT should not be permitted to define breach or termination of the monitoring contract as an event of default in the installation and maintenance contract.

<sup>15</sup> AICC has raised these concerns privately with SWBT. Although SWBT has indicated informally that its present intention is not to have any of these rights, the Commission must receive these same assurances in the form of an amendment to the CEI plan before it can be approved. As filed, the plan cannot be approved because it does not restrict SWBT's ability to engage in such activities

<sup>16</sup> The Bureau should, at a minimum, require each of the two contracts to identify with specificity all charges the customer will incur as a result of entering into the agreement. These charges should also be separately identified on the customer's invoice.

monitoring services is that it does so because SWBT participates in the provision of the alarm monitoring services. Therefore, the Bureau should not approve the SWBT proposal so long as it allows SWBT to share in the revenues derived from the provision of alarm monitoring services to the customer.<sup>17</sup>

### **C. The SWBT-Monitoring Provider Relationship**

A final consideration should be the nature of the relationship between SWBT and the "unaffiliated monitoring entity." Again in this instance, however, SWBT's proposal does not provide a sample contract for the Commission to consider. Clearly, such information is pertinent to the Bureau's analysis, as SWBT asserts this contract will "govern SWBT and the monitoring service(s)" and will "outline[ ] the conditions of the SWBT billing and collection process." (SWBT Plan at 3.) Without this information, the Bureau cannot conclude SWBT will be in compliance with Section 275, and therefore cannot approve the SWBT proposal.

Nevertheless, even without this contract, the Bureau should declare that several elements of the proposal constitute prohibited alarm monitoring services. First, the Bureau should declare that Section 275 means what it says, that SWBT (or any BOC) may not have a financial interest in the monitoring entity, nor may it assert a security interest in the customer contract or alarm monitoring revenues. Such financial arrangements create a danger that the BOC will influence the alarm monitoring entity or their customers, thereby

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<sup>17</sup> AICC has no objection to SWBT being compensated for its billing and collection services. However, such compensation must be equal to the amount it receives for billing other types of services on SWBT invoices, such as the fee it receives for billing interexchange calls provided by IXC's.



becoming engaged in providing alarm monitoring services and obtaining all the anticompetitive potential Section 275 is intended to blunt.

Second, for the duration of the alarm monitoring restriction, SWBT should be prohibited from obtaining a superior right to an alarm monitoring entity, or a set of customers of an alarm monitoring entity. In other words, SWBT should be prohibited from obtaining a right to purchase the entity, a right of first refusal, or any option exercisable after the expiration of the prohibition. The Bureau must receive assurances in this proceeding that SWBT has not and will not obtain any such rights with respect to the "unaffiliated monitoring entity" with which it proposes to offer SWBT Security Service.

Finally, the Bureau must establish a clear distinction between permissible BOC activities and prohibited alarm monitoring services. Without such a "bright line," administration of the prohibition will become unmanageable, requiring detailed regulatory rules to protect against abuse and fostering endless disputes concerning whether a particular activity is permissible or not. In particular, AICC believes this line should be drawn so as to fence off all participation in the alarm monitoring business as the plain language of Section 275 shows was Congress' intent.

Of special concern is SWBT's proposal to act as a sales agent, and receive compensation for such activity, for an alarm monitoring provider. While a distinction between the "sale" of alarm monitoring services and the "provision" of such services might be possible in theory, AICC submits that it will be impossible to police in the real world. For example, AICC believes SWBT may not share in the revenues for alarm monitoring services. However, such revenue sharing might be evaded if SWBT collects a monthly fee purportedly as a "commission" for its sales activity. Also, SWBT may structure its

arrangement such that it receives a commission far exceeding what is otherwise commercially acceptable in order to evade a revenue sharing prohibition. In addition, there is no clear point at which the sale of alarm services ends and "customer support" for the provision of the service begins.

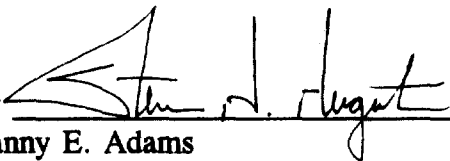
Due to the difficulty in making and enforcing such distinctions, the Commission should establish a bright line which clearly excludes these services from BOC involvement. Without such action from the Commission, it will be asked to referee an endless series of disputes over the meaning of Section 275 and, in the end, Section 275 will be rendered meaningless. The Commission should take this opportunity to declare that the Section 275 prohibition means what it says, and is not merely a requirement for alarm monitoring resale or subcontracting.

## CONCLUSION

For the foregoing reasons, AICC urges the Bureau to direct that SWBT's proposed CEI Plan for Security Service be modified as described above before it can be approved. As presently structured, SWBT's proposal would allow it to operate in violation of Section 275 of the 1996 Act and thus is not in the public interest.

Respectfully submitted,

**ALARM INDUSTRY COMMUNICATIONS  
COMMITTEE**

By  \_\_\_\_\_  
Danny E. Adams  
Steven A. Augustino

**KELLEY DRYE & WARREN, LLP**  
1200 Nineteenth Street, N.W., Suite 500  
Washington, D.C. 20036  
202-955-9600

Its Attorneys

May 24, 1996

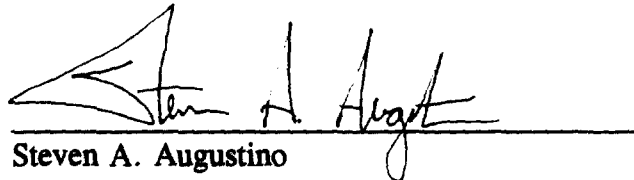
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Comments of the Alarm Industry Communications Committee was serviced by first-class  
U.S. mail, postage prepaid, upon the following:

Robert M. Lynch  
Durward D. Dupre  
Michael J. Zpevak  
One Bell Center, Suite 3520  
St. Louis, Missouri 63101

Ms. Janice Myles  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

International Transcription Service, Inc.  
Room 640  
1919 M Street, N.W.  
Washington, D.C. 20036



Steven A. Augustino